

### **Remarks**

Claims 1-3, 5-14, 16-20, 29-31 and 33 were rejected by the Examiner. In response, claims 1, 3, 10, 14, 29-31 and 33 are amended. No new matter is added.

Claims 1-3, 5-14, 16-20, 29-31 and 33 remain pending and are presented for examination.

### **Rejections under 35 U.S.C. § 103**

Claims 1-2, 6-8, 10-11, 17-19, 29-30 and 33 were rejected under 35 USC 103(a) as being unpatentable over US 6,298,247 B1 to Alperovich et al. (hereinafter "Alperovich"). While Applicant disagrees with these rejections, Applicant has nevertheless amended claims 1, 10 and 29 in order to advance prosecution of the pending claims.

#### **1. Claims 1, 6-8, 10, 17-19, 29 and 33**

Amended claim 1 now recites:

first providing, by the mobile client device, a first audio signal at a first audio volume level to a user;

determining by the mobile client device, the first audio volume level *at which the mobile client device is being utilized by the user* for the first audio signal; and

second providing, by the mobile client device, to the user a second audio signal at a second audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially; and

while providing the first and second audio signals, *incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusively lower volume level to a discernable volume level higher than the first audio volume level*

Thus, when viewed as a whole, as required by law, the method is directed

towards a method of introducing a second audio signal in the context of the presence of a first audio level, which volume is controlled by a user, and both audio signals are provided by the mobile client device. The method requires the initial provision of the second audio signal at a non-intrusive volume level lower than the first audio signal, then an incremental increase of the second audio signal to a discernable volume level higher than the first volume level.

As discussed in the specification, the novel method provides a number of benefits to the user, including but not limited to

- not startling the user with the second audio signal;
- allowing better enjoyment of the first audio signal by the user;
- reducing the risk of hurting the user in the event the user is listening to the first audio signal through a headset.

Alperovich teaches a method for automatically raising or lowering the volume of a radio or the volume of a user's speech to a certain level that is above the level of secondary sources of noise (such as background noise). This method allows the subscriber to utilize the primary audio signal *without being disturbed or interrupted* by an intrusive secondary audio signal, and without increasing the volume of the primary signal higher than necessary to accomplish this goal. Alperovich recites that the volume of the primary audio signal (the radio signal in listening mode, or the speech plus background in speaking mode) is adjusted based on the volume of the secondary audio signal (transducer/microphone/speaker in listening mode, transducer/microphone/speaker in earpiece in speaking mode) and on the user preference data stored in a database.

Thus, when viewed as a whole as required by law, Alperovich teaches a method for providing a primary audio signal in the context of the presence of a secondary audio signal (noise) that is not in control by a primary audio signal providing device, and in particular, adjusting the primary audio volume higher or lower than the secondary audio (noise) volume and in view of user preference.

Thus, Alperovich teaches unequivocal focus on the discernment of the primary

audio signal over the secondary audio signal in view of user preference, with no regard for the secondary noise audio signal.

One of ordinary skill in the art, absent the teaching of the present invention, in view of Alperovich alone, would not be motivated to modify Alperovich to arrive at the present invention. One of ordinary skill in the art in view of Alperovich would simply introduce the second audio signal of claim 1 at a discernable higher volume higher than the first audio signal.

Accordingly, for at least the foregoing reasons, claim 1 is non-obvious and patentable over Alperovich.

Claims 6-8 depend from claim 1, incorporating its recitations, and are thus patentable over Alperovich for at least the same reasons.

Independent claim 10 includes in substance similar recitations discussed above for claim 1, and are thus patentable over Alperovich for at least the same reasons. Independent claim 10 is further patentable over Alperovich as it has now been amended to recite a wireless mobile phone configured to be able to terminate the second audio signal, preventing the second audio signal from intruding on the first audio signal responsive to a user action. As discussed above, Alperovich is concerned with secondary noise, and thus offers no suggestion to one of ordinary skill in the art to terminate the secondary audio signal preventing intrusion on the first audio signal.

Independent claims 10 and 29 include in substance similar recitations discussed above for claim 1, and are thus patentable over Alperovich for at least the same reasons. Amended claim 29 is further patentable over Alperovich as it has now been amended to recite a mobile client device configured to control the volume of a secondary audio signal in the context of a primary audio signal. As discussed above, Alperovich is directed towards a method of controlling a primary audio signal in the context of a secondary (noise) signal, thus offering no teaching or suggestion to one of ordinary skill in the art.

Claims 17-19 and 33 depend from claims 10 and 29, respectively, incorporating their recitations, and are thus patentable over Alperovich for at least the same reasons.

2. Claims 3, 5, 9, 12-14, 16, 20 and 31

Claims 5 and 16 were rejected under 35 USC 103(a) as being unpatentable over Alperovich in view of U.S. Pat. App. 2004/0105538 A1 to Goebel (hereinafter "Goebel"). However, Goebel cannot remedy the deficiencies of Alperovich with regard to claims 1 and 10, from which claims 5 and 16 depend, respectively. Thus, Applicant respectfully submits that claims 5 and 16 are patentable over Alperovich in view of Goebel.

Claims 3, 9, 12-14, 20 and 31 were rejected under 35 USC 103(a) as being unpatentable over Alperovich in view of U.S. Pat. No. 6,351,653 B1 to Alberth, Jr. et al. (hereinafter "Alberth"). However, Alberth cannot remedy the deficiencies of Alperovich with regard to claims 1, 10 and 29. Claims 3 and 9 depend from claim 1 and incorporate its recitations. Claims 12-14 and 20 depend from claim 10, incorporating its recitations, and claim 31 depends from claim 29 and incorporates its recitations. Thus, Applicant respectfully submits that claims 3, 9, 12-14, 20 and 31 are patentable over Alperovich in view of Alberth.

### **Conclusion**

In view of the foregoing, reconsideration and allowance of claims 1-3, 5-14, 16-20, 29-31 and 33 are solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1513. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,  
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